

<div>CITY OF SAN JOSÉ, CALIFORNIA</div> <div>Department of Planning, Building and Code Enforcement</div> <div>801 North First Street, Room 400</div> <div>San José, California 95110-1795</div> <div>STAFF REPORT</div>		Hearing Date/Agenda Number P.C. 02/13/02 Item:	
		File Number CP00-10-072/ABC01-10-010	
		Application Type Conditional Use Permit and Liquor License Exception Permit	
		Council District 6	
		Planning Area Willow Glen	
		Assessor's Parcel Number(s) 264-57-102	
PROJECT DESCRIPTION Conditional Use Permit and Liquor License Exception Permit to allow the off-site sale of alcoholic beverages in conjunction with the operation of an existing grocery store.		Completed by: Anastazia Aziz	
Location: West side of Lincoln Avenue, approximately 100 feet southerly of Coe Avenue			
Gross Acreage: 0.62		Net Acreage: 0.62	
		Net Density: n/a	
Existing Zoning: CP Commercial		Existing Use: Commercial	
Proposed Zoning: No change		Proposed Use: sale of alcohol for off-site consumption at an existing grocery store	
GENERAL PLAN		Completed by: AA	
Land Use/Transportation Diagram Designation General Commercial with Neighborhood Business District Overlay		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations	
SURROUNDING LAND USES AND ZONING		Completed by: AA	
North:	Los Gatos Creek, commercial	CN Neighborhood Commercial	
East:	Commercial	CP Commercial Pedestrian	
South:	Commercial and Multi-Family Residential	CP Commercial Pedestrian and R-M Multi-Family Residential	
West:	Multi-Family Residential	R-M Multi-Family Residential	
ENVIRONMENTAL STATUS		Completed by: AA	
<input type="checkbox"/> Environmental Impact Report <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete	
FILE HISTORY		Completed by: AA	
Annexation Title: North Willow Glen No. 2		Date: July 7, 1950	
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION			
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial		Date: _____ Approved by: _____ <input type="checkbox"/> Action <input type="checkbox"/> Recommendation	
OWNER	APPLICANT		
Alphonse W. DeRose & Lena H. Trustee etal. FP Management and Brokerage 4300 Stevens Creek Blvd. #245 San Jose, CA 95129	Alonso Lopez 1003 Lincoln Avenue San Jose, CA 95125		

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Anastazia Aziz

Department of Public Works

None received.

Other Departments and Agencies

See attached memoranda from Police Department Vice Unit and Fire Department.

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Alonso Lopez, requests a Conditional Use Permit and Liquor License Exception Permit to allow the sale of wine and beer for off-site consumption in conjunction with the existing Mi Rancho grocery store.

The site is located in the CP Commercial Pedestrian Zoning District which allows alcohol sales for off-site consumption subject to approval of a Conditional Use Permit.

The grocery store is located on Lincoln Avenue in the Lincoln Avenue Neighborhood Business District on a 0.62-gross-acre site. Lincoln Avenue contains a variety of commercial uses including personal service shops. Commercial uses are located to the north and south, and multi-family residential uses are located behind the property directly to the north. The grocery store is located adjacent to the rear yards of the nearest residence on Glen Eyrie Avenue and over 500 feet from the San Jose Unified School District's Young Families School.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act.

GENERAL PLAN CONFORMANCE

The existing grocery store use and proposed alcohol sales is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of *General Commercial*.

ANALYSIS

The primary project issues include conformance with the Zoning Code/land use compatibility and conformance with the Liquor License Exception Permit requirements.

Conformance with the Zoning Code/Land Use Compatibility.

Section 20.80.900 of Title 20 of the San Jose Municipal specifies that a Conditional Use Permit for the off-sale of alcoholic beverages can be issued only upon making the following findings as applicable:

1. If the use, is closer than five hundred feet from any other off-sale use, the Planning Commission must find that the proposed off-sale of alcohol would not contribute to an excess concentration of establishments that sell alcohol.
2. If the use is closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred and fifty feet from any residentially-zoned property, the Planning Commission must find that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.

Other establishments which sell liquor are located within the same shopping center and within 500 feet of the Cash and Carry store, including one restaurant and one liquor store. Staff believes that a grocery store within a neighborhood business district is an appropriate location for the off-sale of alcohol and the Police Department has indicated that the proposed use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems. For these reasons, staff concludes that the proposed use would not contribute to an excess concentration of establishments which sell alcohol.

As indicated above, no school is located closer than 500 feet from the existing Mi Rancho store; however residentially-zoned property is located within 50 feet of the subject property. The store's front entry is oriented towards Lincoln Avenue, away from the adjacent residential uses, in keeping with the other commercial uses located in the Neighborhood Business District. The walking distance from the store entry to the nearest residence is approximately 200 feet. Based on these conditions, staff concludes that the Mi Rancho store is located and oriented in such a manner that the off-sale of alcohol would not adversely affect proximate residential uses.

Liquor License Exception Permit. The applicant is also applying for a Liquor License Exception Permit which is required for liquor license applicants that may be denied by the Department of Alcoholic Beverage Control (ABC) pursuant to Assembly Bill (AB) No. 2897, Caldera Bill. AB 2897 requires the ABC to deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses." If the ABC determines that a liquor license application would result in an undue concentration, an applicant may request an Exception Permit from the City based on "public convenience and necessity."

The Planning Commission may grant the Exception Permit if it makes the following findings:

1. The premises are not located in an existing Project Crackdown /Weed and Seed Area or similar areas that qualify for these programs pursuant to the City's Neighborhood Revitalization Strategy.
2. The premises are not located within 300 feet of any public or private school.
3. The City's Police Department has determined that the use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.

The Police Department reports that the crime rate in the area is relatively low and that the site is not in a Project Crackdown area or similar strategy area. The closest elementary school is located well over 300 feet from the project site and the Police Department has indicated no concerns regarding the proposed Exception Permit.

CONCLUSION

The proposed use is consistent with the requirements of the Zoning Code and Liquor License Exception Permit and is compatible with surrounding commercial and residential uses.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and Liquor License Exception Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The site is located in the CP Commercial Pedestrian Zoning District which allows grocery sales as a permitted use and off-site alcohol sales subject to approval of a Conditional Use Permit.
3. The applicant proposes to offer beer and wine for sale for off-site consumption.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment. The project is subject to San Jose Municipal Code Section 20.28.260, which regulates off-sale of alcohol.

5. The project is subject to the Exception Permit criteria for a liquor license for the sale of off-site alcohol sales. The project site is located in an area with an existing concentration of liquor licenses. The site is not located in an area with a high number of calls for police service or a high crime rate.
6. The site is not located in an existing Project Crackdown /Weed and Seed Area or in similar areas, which qualify for these programs based on the City's Neighborhood Revitalization Strategy Criteria.
7. The site is not located closer than 500 feet from any public or private school (preschool through high school).
8. The City's Police service investigation information (including but not limited to site specific neighborhood analysis of calls for service) indicates the proposal would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.
9. The site is located within 50 feet of property zoned and used for residential purposes.
10. Other off-sale establishments are located along Lincoln Avenue in the Neighborhood Business District and within 500 feet of the Mi Rancho store.
11. A grocery store within a Neighborhood Business District is an appropriate location for the off-sale of alcohol and the Police Department has indicated that the proposed use at this location would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.
12. The store's front entry is oriented towards Lincoln Avenue, away from the adjacent residential uses, in keeping with the other commercial uses located on Lincoln Avenue. The walking distance from store entry to nearest residence is approximately 200 feet.
13. With issuance of the subject Conditional Use Permit, the proposed use would meet the requirements of the Type 20-Off-Site Sale Beer and Wine liquor license.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed location of the off-sale of alcohol use will not contribute to an excess concentration of establishments which sell alcoholic beverages.
3. The proposed use is located and oriented in such a manner that the off-sale of alcohol use will not adversely affect proximate residential uses.

4. The proposed project complies with all applicable provisions of the Zoning Ordinance because the subject commercial establishment is located and oriented in such a manner that the off-sale of alcohol would not adversely affect proximate residential uses.
5. The off-site sale of alcohol in that the proposed off-sale of alcohol would not contribute to an excess concentration of establishments that sell alcohol.
6. The premises are not located within 300 feet of any public or private school.
7. The subject site is located within 50 feet of residentially-zoned property; however, the store's front entry is oriented towards Lincoln Avenue and the walking distance from the store entry to the nearest residence is approximately 200 feet.
8. The proposal meets the requirements of the Liquor License Exception Permit process.
9. The proposed project is in compliance with the California Environmental Quality Act.
10. The premises are not located in an existing Project Crackdown /Weed and Seed Area or similar areas that qualify for these programs pursuant to the City's Neighborhood Revitalization Strategy.
11. The City's Police Department has determined that the use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Site Plan," dated February 4, 2002 on file with the Department of Planning, Building and Code Enforcement and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
2. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. The approval authority may impose substantive conditions designed to decrease sanitary sewage associated with any land use approval.
3. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

4. **Hours of Operation.** This commercial facility shall not operate between the hours of 12:00 midnight and 7:00 A.M.
5. **Alcohol Sales.** The sale of alcohol shall conform to the requirements of the Liquor License requirements of the Department of Alcoholic Beverage Control.
6. **Grocery Store Use.** The sale of alcohol shall be allowed in conjunction with the grocery store use and shall not be allowed in conjunction with any other use.
7. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside the property.
8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

C: Building Division (2)
Engineering Services